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Las Vegas, Nevada 89101
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Attorneys for Debtor(s)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In the matter of:

Oscar Arnoldo Orellana and
Elvira Orellana,

Debtors.

Case No: BK-09-25412-BAM
Chapter 13

Date: 2-18-10
Time: 2:30 p.m.
Rick A. Yarnall

**AMENDED MOTION TO VALUE DEBTORS' NON-PRINCIPAL RESIDENCE REAL
PROPERTY, AVOID WHOLLY UNSECURED LIEN(S) ENCUMBERING SAME,
AND TO MODIFY THE RIGHTS OF PARTIALLY SECURED LIENHOLDER(S)
AND OBJECTION TO LIENHOLDERS' PROOFS OF CLAIM, IF ANY**

Come Now Debtors, Oscar Arnoldo Orellana and Elvira Orellana, by and through their legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates, who respectfully move this Court to value Debtors' non-principal residence, determine the junior lien of CitiMortgage, Inc to be wholly unsecured and the first lien to be partially unsecured, to avoid said wholly unsecured liens and to modify the rights of said creditors accordingly including determining the claims pursuant to any proof(s) of claim which such lienholders may have filed to be unsecured where there is insufficient equity in the residence to secure more than the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and all documents and pleadings on file herein.

1 Dated this 18th day of January, 2010.

2 CROSBY & ASSOCIATES

3
4 By:

5 David M. Crosby, Esq.
6 Attorney For Debtors
7 -----

8 **POINTS AND AUTHORITIES**

9
10 **I.**

11 **STATEMENT OF FACTS**

12 1. Debtors filed a Chapter 13 petition in United States Bankruptcy Court,
13 District of Nevada on August 21, 2009.

14 2. On the date of the petition, Debtors were the owners of real property used
15 as rental property known and described as 2735 San Vincente Street, Las Vegas, NV
16 89115 (Exhibit "1") legally described as follows:

17 Lot Twenty (20) in Block Five (5) of Holiday Park No. 10, as
18 shown by map thereof on file in Book 15 of Plats, Page 52
19 in the Office of the County Recorder of Clark County,
20 Nevada.

20 APN: 140-18-310-010

21 3. The value of said real property at the time Debtor's Chapter 13 Petition
22 was filed was \$41,605.00 as set forth more particularly in an internet appraisal of subject
23 property (Exhibit "2").

24 4. Said property at the time of filing was subject to the following lien
25 allegedly evidenced by Promissory Notes and Deeds of Trust:
26
27
28

1 First Mortgage: (Exhibit "3")
 2 America's Servicing, Co \$ 167,997.54
 3 P.O.Box 10328
 4 Des Moines, IA 50306
 5 Loan # xxxxxx8696

6 Second Mortgage: (Exhibit "4")
 7 CitiMortgage, Inc. \$ 41,451.95
 8 P.O. Box 6006
 9 The Lakes, NV 88901-6006
 10 Loan # xxxxxx5595

11 5. As of the date Debtors' Chapter 13 Petition was filed no equity existed in
 12 said property above the amount of the appraisal value of \$ 41,605.00 thereby leaving
 13 the junior loan to CitiMortgage, Inc as wholly unsecured and the first loan to America's
 14 Servicing, Co as partially secured to the extent of the value of the property. If said
 15 property were foreclosed or otherwise sold at auction on the date of the petition, there
 16 would be insufficient proceeds to pay anything to CitiMortgage, Inc on the junior loan
 17 and only partial payment to America's Servicing, Co on the first loan.

18 6. Debtors declare that the entire junior claim of CitiMortgage, Inc is
 19 unsecured and the first claim of America's Servicing, Co is only partially secured such
 20 that all such unsecured debt should be reclassified as unsecured to share pro rata with
 21 other general unsecured creditors through the debtors' Chapter 13 plan with any proof(s)
 22 of claim filed by it modified accordingly to document the claim as unsecured, and that
 23 the junior lien filed by CitiMortgage, Inc, as identified above encumbering subject
 24 property be properly avoided by Order of this Court and the lien of America's Servicing,
 25 Co on the first loan be modified accordingly by order of the Court.

26 II.

27 LEGAL ARGUMENT

28 A. The Restrictions of 11 U.S.C. § 1322(b)(2) Do Not Apply to Real Property Which is Not Debtor's Principal Residence.

11 U.S.C. §1322(b)(2) does not apply to this property as it is not Debtors' principal residence. That section provides:

(b) Subject to subsections (a) and (c) of this section, the plan may—

* * * * *

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest that is secured by an interest in real property that is the debtor's principal residence,

B. The Claims by Lienholders May be Bifurcated into Secured and Unsecured Claims Pursuant to 11 U.S.C. §506(a).

11 U.S.C. § 506(a)(1) provides in pertinent part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim.

In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the majority view in the various circuits, that a, wholly unsecured lienholder is not entitled to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured lienholder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a).

C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by Order of This Court to any Modification of Their Rights Determined by This Court.

11 U.S.C. §502 provides that a claim of interest represented by proper Proof of Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtors herewith objects to any and all Proof(s) of Claim which may have been filed by CitiMortgage, Inc or America's Servicing, Co, relative to their loans and request that any Proof(s) of Claim of same representing such claims be modified accordingly to unsecured claims consistent with the Order of this Court determining their claims to be

1 wholly unsecured in the case of the junior lien and only partially secured in the case of
2 the first lien.

3 III.

4 CONCLUSION

5 Debtors respectfully request determination of value of Debtors' non-principal
6 residence real property to be less than the amount of the first lien and argue that since
7 the junior claim is wholly unsecured, it may be completely avoided and "stripped off"
8 pursuant to 11 U.S.C. §506(a) and that the first claim of America's Servicing, Co may
9 be modified, stripped down and reduced to the actual value of the property; that the said
10 claims be reclassified as general unsecured claims to be paid pro rata with other general
11 unsecured creditors through the debtors' Chapter 13 plan; that any Proof of Claim of the
12 lienholders be modified consistent with the actual value of the property.

13 WHEREFORE, Debtors pray that this Court:

14 1. Determine the value of Debtors' non-principal residence to be \$41,605.00
15 or such other amount as the evidence may justify as of the date of the Petition; and

16 2. Avoid and extinguish the junior lien of CitiMortgage, Inc, as wholly
17 unsecured lien pursuant to 11 U.S.C. Section 506(a) upon completion of the Debtor's
18 Chapter 13 plan; and

19 3. Modify the first lien of America's Servicing, Co as secured only to the
20 extent of the actual value of the property as of the date of the Petition to be paid through
21 the Chapter 13 Plan; and

22 4. Reclassify the second claim of CitiMortgage, Inc, and the non-secured
23 portion of America's Servicing, Co's claim as a general unsecured claims to be paid pro
24 rata with other general unsecured creditors through the Debtors' Chapter 13 plan; and

25 5. Conform any Proof(s) of Claim filed by the claim of America's Servicing,
26 Co to the secured/unsecured status of said claims as determined by this Court; and

27 ///

28 ///

6. Order such other relief as the Court may deem appropriate.

Dated this 18th day of January, 2010.

Respectfully Submitted:

CROSBY & ASSOCIATES

By:


David M. Crosby, Esq.
Attorney for Debtors

20020114
00:37

20
Affix R. P. T. T. \$215.00
Parcel Number: 140 18 310 010

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That
FORTUNE HOLDING GROUP, A Nevada Corporation
FOR A VALUABLE CONSIDERATION, the receipt of which is hereby
acknowledged, do hereby Grant, Bargain, Sell and Convey to:
OSCAR A. ORELLANA, A married man as his sole and separate property

all that real property situated in the County of Clark, State of Nevada, bounded and
described as follows:

Lot Twenty (20) in Block Five (5) of HOLIDAY PARK NO. 10 as shown by map
thereof on file in Book 15 of Plats, page 52, in the Office of the County Recorder of
Clark County, Nevada.

SUBJECT TO:

1. Taxes for the fiscal year 2001 and 2002
2. Covenants, conditions, reservations, rights, rights of way,
easements, now of record.

Together with all and singular the tenements, hereditaments and appurtenances
thereunto belonging or in anywise appertaining.

FORTUNE HOLDING GROUP
Sharon Wilson
Sharon Wilson, PRESIDENT

STATE OF NEVADA)
COUNTY OF CLARK) ss.

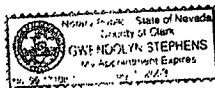
On January 9, 2002
personally appeared before me, a Notary
Public (or judge or other authorized person,
as the case may be):
Sharon Wilson
personally known (or proved) to me to be the
person whose name is subscribed to the above
instrument who acknowledged that he
executed the instrument.

Send Tax Statements To

ESCROW NO. 44461 GS
STERLING ESCROW
WHEN RECORDED MAIL
Mr. Oscar A. Orellana
2735 San Vincente Street
Las Vegas, NV 89115

Sharon Wilson
Signature

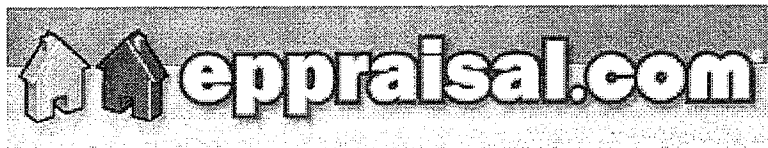
(NOTARIAL SEAL)



CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF

NOTATION TITLE COMPANY
01 14 2002 00:17 REC
BOOK 0020114 INST 00707
FILE 14.00 APT 1 115.00

EXHIBIT



Street Address

Home Values

Local Info

Find a Pro

2735 San Vincente St Las Vegas, NV 89115

Home Details | Recently Sold Homes | Similar Homes for Sale | Home Values | Schools



Estimated Home Values:

eppraisal \$41,605

Low \$35,364 - High \$47,845

Zillow.com \$117,500

cyberhomes \$106,742

Help



Add to favorites



Find a Pro

Home Details

Public Record

User Edits (Login or Register to edit.)

Bedrooms: 2

Bedrooms: N/A

Bathrooms: 2.00

Bathrooms: N/A

Square Footage: 837

Square Footage: N/A

Year Built: 1980

Year Built: N/A

La
Kn
Ca
Se
ww



Home Details

Con
Rea

EXHIBIT



AMEF
1080 I
Las Vi

What's My House Worth?

Find your home's current market value online with HouseValues.com.
www.HouseValues.com



Ads by Google

(702)

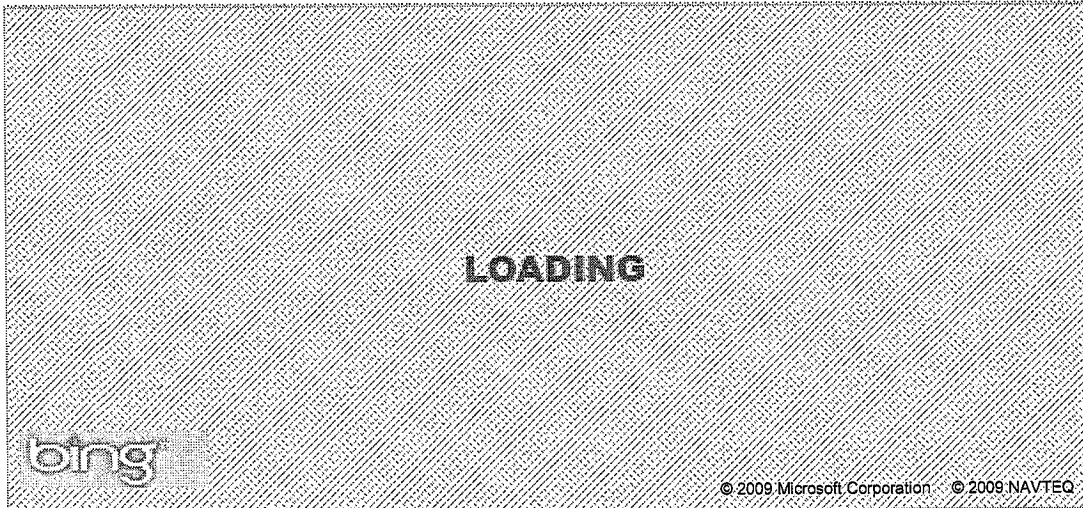
Visit I

Recently Sold Homes

Similar Homes for Sale

Recently Sold Homes

Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.
2715 Ventura Way North Las Vegas, NV 89030	\$36,500	4/8/2009	2/1	768
2724 Ventura Way North Las Vegas, NV 89030	\$32,000	4/20/2009	2/1	768
2725 Soledad Way North Las Vegas, NV 89030	\$25,000	4/6/2009	2/1	768
3709 Reseda Cir North Las Vegas, NV 89030	\$40,000	5/18/2009	3/1	864
3717 Reseda Cir North Las Vegas, NV 89030	\$49,900	11/17/2008	2/1	768



Recent Sales

Las Vegas, NV Home Values

Home Value Trending

What's This

- Local
- State
- National

Nea

Curre

.



FIN
S

www.forecl

891

3751



2469



Return Mail Oper.
PO Box 10388
Des Moines, IA 50306-0388

Monthly Mortgage Statement

Statement Date 08/27/08
Loan Number 1127138696

Customer Service

Online
www.mortgageaccountonline.comTelephone 800-842-7654
Hours of Operation
Mon - Fri, 8 AM - 6 PM.
in your time zoneFax
866-453-6315Payments PO Box 60768
Los Angeles CA 90060
Correspondence PO Box 10328
Des Moines IA 50306

000092 1 AT 0.346 (0092-000092 000183 001 01 ACN04P 106 012)

OSCAR A ORELLANA
1483 MINER WAY
LAS VEGAS NV 89104-5405

Important Messages

Summary

Payment (Principal and/or Interest, Escrow)	\$1,139.96
Optional Product(s)	\$0.00
Current Monthly Payment 10/01/08	\$1,139.96
Overdue Payments	\$0.00
Unpaid Late Charge(s)	\$0.00
Other Charges	\$0.00
TOTAL PAYMENT DUE 10/01/08	\$1,139.96

Property Address

2735 SAN VICENTE ST
LAS VEGAS NV 89115Unpaid Principal Balance \$167,997.54
(Contact Customer Service for your payoff balance)Interest Rate 7.375%
Interest Paid Year-to-Date \$8,259.84
Taxes Paid Year-to-Date \$416.32
Escrow Balance \$114.09

Activity Since Your Last Statement

Date	Description	Total	Principal	Interest	Escrow	Late Charge	Other
08/27	PAYMENT	\$1,139.96		\$1,032.48	\$107.48		

000092/000183 ACN04P 0092 CTM1C001 1



Please detach and return with your payment

Loan Number	1127138696
Total Payment Due 10/01/08	\$1,139.96
After 10/16/08 Add Late Fee	\$51.62
Total Amount Due After 10/16/08	\$1,191.58

Check here and see
reverse for address
correction.

OSCAR A ORELLANA

0092/000092/000183 001 01 ACN04P 106 012

AMERICA'S SERVICING CO.
PO BOX 60768
LOS ANGELES CA 90060-0768

EXHIBIT 3

2000-02-01 01:17 SINDY 17026497413 >> 702 382 1921 106 1127138696 9 10000113996011915801139960000000 000000001997006391 8

Account Information

Statement Date: 09/01/08

Property Address: 2735 SAN VINCENTE ST
LAS VEGAS NV 89115-0000

ACCOUNT NUMBER: 0770990559-5

Type of Mortgage FRHEL W/15 YR BLN
Principal Balance \$41,451.95
Interest Rate 10.25000%
Interest Year to Date \$2,839.22

citimortgage

Page 1 of 2

MORTGAGE ACCOUNT STATEMENT

Take command of your mortgage - Visit Today!
www.citimortgage.com

Customer service 1-800-283-7918*
*Calls are randomly monitored and recorded to ensure quality service.

Would you like an easier way to make your mortgage payment?
Sign up for E-Z Pay today.

SIS0071D-264302452008AH04-09/01/08-137-009509-1

OSCAR A ORELLANA
1483 MINER WAY
LAS VEGAS NV 89104-5405

Account Activity

	PAYMENTS RECEIVED	CURRENT PAYMENT DUE
Date	08/26/08	10/01/08
Principal	\$22.10	\$22.29
Interest	\$354.26	\$354.07
Total Amount	\$376.36	\$376.36

For routine questions regarding the servicing of your mortgage loan, please call our Customer Service department at 1-800-283-7918.
If you have a complaint or concern that you have been subjected to unfair lending practices in relation to a mortgage loan or other financial product or service that you obtained through our company or a third party, please call our Fair Lending Hotline at 1-866-309-1054.

Monthly Highlights

To continue to provide you with excellent service, CitiMortgage has extended our Customer Service hours. Please feel free to contact us about your mortgage during our new extended hours: Monday through Friday from 7:00 a.m. to 12:00 Midnight Eastern Time, Saturday from 8:00 a.m. to 7:00 p.m. Eastern Time, and Sunday from 12:00 Noon to 11:00 p.m. Eastern Time.

Apply for the Citi Cash Returns Card.
Most ways to earn, easiest to redeem -
It's Automatic! Visit www.cardsoffer.citicards.com
And enter offer code RR2.

Account Number: 0770990559-5

OSCAR A ORELLANA

Please designate how you want us to apply any additional funds.
Undesignated funds first pay outstanding late charges and fees, then principal. Once paid, additional funds cannot be returned.

- ☐ Please check box to indicate mailing address/phone number changes and enter on reverse side.
Include account number on check and make payable to:

|||||
CITIMORTGAGE, INC.
PO BOX 6006
THE LAKES NV 89901-6006
|||||

	Due Date: 10/01/08	Total Amount Due: \$376.36
See detail below		
Additional Principal:	\$	
Additional Escrow:	\$	
If payment received after: 10/18/08 Add late charge of: \$18.81	\$	
Additional Monthly Payment:	\$	
Total Amount Enclosed	\$	

EXHIBIT

Please do not send cash. Please allow 7 to 10 days for postal delivery.
To ensure timely processing of your mortgage payment, please use the enclosed envelope and coupon. Do not include account number with your payment.

007709905595 0000037636 0000039517 0000037

EXHIBIT